UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

Judgement No. 731

Case No. 782: RAISSIS-SONNENDRÜCKER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Leliel Mikuin Balanda;

Whereas, on 7 February 1994, Marie Louise Raissis-Sonnendrücker, a staff member of the United Nations, filed an application requesting the Tribunal:

> "...to rule that I am entitled to compensation at least equal to the net loss which I have incurred and will continue to incur as long as I am employed and as long as I am in receipt of a pension ...
>
> ... [resulting from failure] ... to inform me clearly of the financial disadvantages of my promotion from G-7 to P-2, [on 1 January 1989] ..."

or

> "... to allow me to revert to the G-7, step XI level, ... with retroactive effect to 1 January 1989, ..."

Whereas the Respondent filed his answer on 9 February 1995;

Whereas the Applicant filed written observations on 25 August 1995;

Whereas, on 28 September 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of the International Trade Centre (ITC) on 18 March 1974, as a Research Assistant at the G-6 level, pursuant to a one year fixed-term appointment. She served on a succession of fixed-term appointments until 1 January 1983, when she was granted a permanent appointment. On 1 January 1986, she was promoted to the G-7 level, as Principal Research Assistant. On 1 January 1989, the Applicant was promoted to the P-2, step XI level, as Associate Trade Promotion Officer. On 1 September 1991, she was promoted to the P-3, step VI level, as Trade Promotion Officer.

When the Applicant was promoted from the General Service to the Professional category, she was granted a non-pensionable, Personal Transitional Allowance (PTA) of US$263.30 per month, for an initial period of one year, starting on 1 January 1989. According to the P.5 Personnel Action form implementing her promotion her "Pension Fund remuneration [would] be maintained at G.7/XI MAX [MAXIMUM] until the Pension Fund remun[eration] at Prof[essional] level is equal or higher."

In a letter dated 18 February 1989, the Applicant raised with the Chief, Personnel Administration Section, Division of Administration, several issues relating to the effect on her benefits of her transition from the G-7 to the P-2 level. Noting that she had previously been given an assurance that "a promotion cannot give rise to a loss in remuneration," she asked for an explanation.

In a reply dated 12 July 1989, the Head, Regular Staff Unit, Personnel Administration Section reviewed the issues raised in the Applicant's letter, stating with respect to the PTA:

> "... the sum shown in the P.5 action, i.e. US$263.30 per month, is to adjust your present salary level to that of a G.7 step XI. If, after the initial period of one year, the P.2 salary scale at the step XI level is equal to or more

> than that of a G.7/XI the allowance will cease, if not it will continue until such time as the P.2/XI salary scale matches that of the G.7/XI. I confirm that the PTA is not pensionable."

She confirmed that the Applicant's contribution to the Pension Fund "will continue at the G.7 rate until such time as it matches the contribution in the professional category."

The Applicant's PTA was extended from 1 January 1990 through 30 June 1990, at an increased rate of US$267.39 per month. On 9 July 1990, a P.5 action form was issued to discontinue the Applicant's entitlement to the PTA, with effect from 1 July 1990.

On 11 July 1990, the Applicant wrote to the Executive Director, ITC, contesting the decision to suspend payment of the PTA. She noted that between 1988 and 1990 staff in the General Service category in Geneva had received annual increases corresponding to the cost of living index. In contrast, her salary "has remained the same as it was in December 1988; that is to say that it is now approximately 7% less than it would be if I had remained in the General Service staff." She requested that her situation be reviewed and that the decision to terminate her PTA be rescinded. In a letter to the Director, Division of Administration, dated 30 August 1990, the Applicant again raised these concerns.

On 11 September 1990, the Applicant requested the Secretary-General to review the administrative decision to discontinue her PTA.

On 26 February 1991, the Applicant lodged an appeal with the Joint Appeals Board (JAB) against the decision to discontinue the PTA and against the reduction in her salary and in her pensionable remuneration, following her promotion.

On 1 September 1991, following her promotion to the P-3 level, the Applicant questioned the calculation of her step at the higher grade. In a letter to the Secretary General, dated 28 October 1991, the Applicant noted that had her promotion to the

P.3 level been implemented at step 11, rather than step 6, her resulting salary would have at least equalled the salary she would have received had she remained at the G.7 level. In a reply, dated 21 November 1991, the Director of Personnel Administration and Training informed the Applicant that the Secretary-General did not object to her contesting the modality of the implementation of her P-3 promotion in the context of her appeal relating to her P-2 promotion.

The JAB adopted its report on 5 November 1993. Its considerations, conclusions and recommendations read, in part, as follows:

"Considerations

...

22. The Panel concluded that the staff member had actively sought promotion to the Professional category by a series of applications dating back to 1979 and, in particular, by applying for the P-2 vacancy in ITC advertised as vacancy notice ITC/VN/3 1988. Her case was, therefore, different from that of General Service staff whose posts had been reclassified to the Professional level. Under the circumstances it believed that it was incumbent upon a staff member to familiarize himself/herself with significant differences in the conditions of service between the two categories, particularly the level of emoluments, and that the Appellant's professed ignorance of these differences, was not a justification for her claim that the Organization maintain the compensatory measures or make provision for her to revert to the General Service category.

23. It found it reasonable to conclude therefore that a staff member making such an application had accepted the differences, including those relating to the level of emoluments and decided that there were also other benefits of greater job satisfaction and higher levels of responsibility that a career in the Professional category offered. The Panel, therefore, found no grounds to support the Appellant's claim to revert to the General Service category because of differences in the level of pay, which it considered to be neither in her own personal best interest nor that of the Organization.

Conclusions and Recommendations

24. On the basis of the available evidence and information the Panel concludes that the Appellant has received fair treatment. When selected for promotion to P-2, she was granted, although she had not participated in the competitive examination for promotion to the Professional category, the same advantages as the candidates who had successfully passed the examination. She was granted a Personal Transitional Allowance until such time when her P-2 salary was higher than the previous G-7 payment. Moreover, she was promoted to P-3 two years and eight months after the promotion to P-2.

25. Furthermore, the Panel concludes that the Administration of the International Trade Centre applied, in cooperation with the competent United Nations authorities at Headquarters and in Geneva, the administrative instructions of the United Nations relating to promotions.

26. If, as stated by the Respondent on 31 May 1991, 'the extensive overlapping of salary scales from the General Service into the Professional and higher categories, together with the continuous increase in the General Service salaries, has led to an abnormal situation at certain duty stations, including Geneva', the Panel concludes that this is a legislative and not a judicial question.

27. The Panel makes no recommendation in support of the appeal."

In a letter dated 22 November 1993, the Under-Secretary-General for Administration and Management transmitted a copy of the JAB report to the Applicant and informed her that "the Secretary-General has decided to maintain the contested decision and to take no further action in your case."

On 7 February 1994, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant's promotion from the General Service to the Professional category resulted in a financial loss to her.

2. The Applicant was never informed that a promotion could involve a financial loss. On the contrary, she was assured that a promotion could not involve such a loss.

Whereas the Respondent's principal contentions are:

1. The Applicant willingly sought promotion and has no right to revert to the General Service category.

2. The significant differences in conditions of service between the General Service and the Professional category, and their effects in Geneva because of the currency exchange rates, are public knowledge.

3. The PTA ensured that the Applicant's salary was not below what she earned at the General Service level prior to her promotion. Thereafter, her salary changed in accordance with the salary movements of the Professional category.

The Tribunal, having deliberated from 10 October to 21 November 1995, now pronounces the following judgement:

I. The Applicant appeals a decision of the Secretary-General dated 22 November 1993, adopting an adverse recommendation by the Joint Appeals Board (JAB). The Applicant asks that the Tribunal rule that she is entitled to compensation at least equal to the net loss which she allegedly sustained and will continue to incur as a result of her promotion from the General Service to the P-2 level, on 1 January 1989 and then to the P-3 level, on 1 September 1991. Alternatively, the Applicant asks that the Tribunal allow her to revert to the General Service category with effect from 1 January 1989. In essence, the Applicant complains that the grant of a promotion she sought from the General Service to the Professional category has resulted in her remuneration and emoluments being less than they would have been had she remained in the General Service

category. This results primarily from the different methodologies set forth in the Staff Rules governing remuneration and emoluments with respect to each category. The adverse situation described by the Applicant is also to a significant degree the result of fluctuations in the exchange rate between the Swiss franc and the US dollar. In short, there is no specification by the Applicant of any failure to apply to her properly any particular staff rule. There is no claim of any non-observance of the terms of her appointment. Her general complaint is that she should have been better off following her promotion than she was before.

II. When the Applicant's case was before the JAB, its primary focus, as viewed by the JAB, related to the discontinuance, with effect from 1 July 1990, of a Personal Transitional Allowance (PTA) which had previously been paid to the Applicant. This resulted from an interpretation made by the Administration of paragraph 17 of ST/AI/279 of 20 January 1981, to the Applicant's advantage. The PTA was designed to ensure that the Applicant's salary in the Professional category was at least equal to that of her level and step in the General Service category at the time of her promotion. The PTA was to cease permanently once her Professional category salary equalled or exceeded the final salary she had received while in the General Service category. Changes made in General Service salaries, subsequent to her promotion, could not affect her salary. The Applicant had been made aware of the manner in which the PTA would operate long before it was discontinued. In the appeal before the Tribunal, the Applicant does not pursue any issue relating to the PTA. In any event, there is no showing that the discontinuance of the Applicant's PTA with effect from 1 July 1990 was in conflict with the applicable rules. Although, as noted above, the JAB's attention was mainly directed at the issue relating to the PTA, it also dealt with the Applicant's claim to revert to the General Service category.

III. The Tribunal notes that, contrary to the contention of the Applicant, it was not the responsibility of the Organization to inform her of possible future disadvantages relating, in part, to differences in salary movements between different categories that might be associated with her promotion from the General Service to the Professional category. She sought the promotion and must be presumed to have been acquainted with the salary provisions of the Staff Rules applicable to the Professional category. The Tribunal also notes, as did the JAB, that, for a period of time, the Applicant received especially favourable treatment as her pensionable remuneration was based on her former General Service salary instead of her Professional category salary, with corresponding higher contributions to the Pension Fund by the Organization.

IV. This case involves a sought-for promotion obtained by the Applicant rather than a reclassification of her post from the General Service to the Professional category. Nevertheless, the Applicant's claim to revert to the General Service category raises essentially the same question that was decided by the Tribunal in Judgement No. 629, Clavel and Sallier (1993). For the reasons set forth in paragraphs VII and VIII of that Judgement, there is no merit in the Applicant's position. (See also ILOAT Judgement No. 1322, In re Anderson (1994)). The Tribunal agrees with the unanimous view of the JAB that the problems described by the Applicant raise legislative, not judicial, issues, and, therefore, are not within the competence of the Tribunal, which is limited to claims of non-observance of a staff member's contract of employment, including applicable Rules and Regulations. Here, the Applicant has not identified any such non-observance.

V. The Applicant also invites the Tribunal's attention to similar matters relating to a subsequent promotion she received from

the P-2 to the P-3 level. The JAB found that the applicable Administrative Instructions relating to promotions had been applied properly. Indeed, the Applicant had been promoted to the P-3 level after only two years and eight months following her promotion to the P-2 level. The Tribunal finds no reason to disagree with the JAB's conclusion regarding the latter promotion. The Applicant also attempts to raise some issues which were not considered by the JAB. These are not properly before the Tribunal.

VI. The Tribunal notes with dismay the difficulties encountered by the Applicant, which she has brought to the attention of the Tribunal, in connection with her efforts to obtain assignment of counsel by the Office of the Coordinator of the Panel of Counsel. The Tribunal trusts that this Office will be more responsive in the future to requests for assistance from applicants.

VII. For the foregoing reasons, the application is rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Mikuin Leliel BALANDA
Member

New York, 21 November 1995

R. Maria VICIEN-MILBURN
Executive Secretary